IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 15276 of 2007(R)

IA.1889/2007 IN OS No.....OF DISTRICT COURT
(VACATION COURT), ERNAKULAM

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PETITIONERS:
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1. P.R.GOPI, PANAKKAL HOUSE,
   KARIMPADOM, CHENNAMANGALAM P.O.

2. T.K.GOPI, THOZHUTHUNKAL HOUSE,
   KARIMPADOM, CHENNAMANGALAM P.O.

3. M.P.SUDHI, MUTHEDATHU HOUSE,
   KARIMPADOM, CHENNAMANGALAM P.O.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:
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1. DHARMARTHA DAYINI SABHA, KARIMPADOM,
   CHENNAMANGALAM P.O., REP. BY ITS SECRETARY,
   SRI.T.V.SALIM, THARAYIL HOUSE, KARIMPADOM,
   CHENNAMANGALAM P.O.

2. K.V.RAMAKRISHNAN, PRESIDENT,
   S.N.D.P. PARAVUR TALUK UNION, PARAVUR.

3. SATYAN NEDUKAPPILLY, VICE PRESIDENT,
   S.N.D.P. PARAVUR TALUK UNION, PARAVUR.

4. PROF.M.G.SASIDHARAN, SECRETARY,
   S.N.D.P. PARAVUR TALUK UNION, PARAVUR.

5. C.K.GANGADHARAN,
   CHAKKALAPARAMBIL, KARIMPADOM,
   CHENNAMANGALAM P.O.

6. K.P.SADANANDAN, KANNAMPARAMBIL,
   KARIMPADOM, CHENNAMANGALAM P.O.

7. K.K.SATHEESAN, KUNNUKATTIL HOUSE,
   KARIMPADOM, CHENNAMANGALAM P.O.

8. K.P.UNNIKRISHNAN, KALISSERY HOUSE,
KARIMPADOM, CHENNAMANGALAM PO.

9. T.G.ANOOP, THENAYAT HOUSE,
KARIMPADOM, CHENNAMANGALAM PO.

10. SUJAY SATYAN, KALATHINGAL HOUSE,
KARIMPADOM, CHENNAMANGALAM PO.

11. N.PRASAD, THATTARUPARAMBIL HOUSE,
KARIMPADOM, CHENNAMANGALAM PO.

12. V.S.UNNIKRISHNAN, VALLATHERIL HOUSE,
KARIMPADOM, CHENNAMANGALAM PO.

13. K.P.ANILKUMAR, KOVAT HOUSE,
KARIMPADOM, CHENNAMANGALAM PO.

14. C.K.BOSE, CHENNAMPARAMBIL,
MANAKODOM, CHENNAMANGALAM PO.

R1 BY ADV. SRI.T.K.VENUGOPALAN
SRI.SHIBU JOSEPH
R2 TO R4 BY ADV. SRI.K.NARAYANAN
R5 TO R13 BY ADV.SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI P.B.KRISHNAN
R14 BY ADV. SRI.SUDHEESH.A.
SMT.C.V.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE TYPED COPY OF THE ORDER DATED 14.5.2007

EXT.P2 TRUE PHOTOCOPY OF THE PLAINT FILED IN UNNUMBERED O.S. OF 2007 DISTRICT COURT (VACATION COURT), ERNAKULAM.

EXT.P3 TRUE PHOTOCOPY OF IA NO.1889/2007 IN O.S.NO../2007 DISTRICT COURT(VACATION COURT), ERNAKULAM

EXT.P4 TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENTS 2, 3 AND 4

EXT.P5 TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY 8TH RESPONDENT

EXT.P6 TRUE PHOTOCOPY OF PRINTED BYELAW2S OF THE FIRST RESPONDENT SOCIETY

EXT.P7 TRUE PHOTOCOPY OF THE ORDER DATED 23.7.2003 IN CRP NO.1361/2001 HIGH COURT OF KERALA

EXT.P8 TRUE PHOTOCOPY OF THE INTERIM ORDER DATED 29.11.2006 IN IA NO.4478/2006 IN FAO NO.280/2006 HIGH COURT OF KERALA

EXT.P9 TRUE PHOTOCOPY OF THE NOTICE ISSUED BY RESPONDENTS 2 TO 4 PURPORTING TO CONVENE THE MEETING OF THE D.D.SABHA

EXT.P10 TRUE PHOTOCOPY OF ELECTION NOTIFICATION DATED 18.4.2007 ISSUED BY 14TH RESPONDENT

EXT.P11 TRUE PHOTOCOPY OF NOTICE OF GENERAL BODY MEETING DATED 22.5.2007 ISSUED BY THE 7TH RESPONDENT

EXT.P12 TRUE PHOTOCOPY OF THE APPOINTMENT ORDER DATED 16.7.2007 ISSUED BY THE 7TH RESPONDENT TOGETHER WITH ANNEXURE

RESPONDENTS' EXHIBITS:

EXTR10(a) TRUE COPY OF THE JUDGMENT DATED 25.7.2006 PASSED BY THE MUNSIFF'S COURT, NORTH PARAVUR IN OS NO.360/2000

EXTR10(b) TRUE COPY OF THE JUDGMENT DATED 9.11.2006 PASSED BY THE DISTRICT COURT, NORTH PARAVUR IN AS NO.286/2006

EXT.R10(c) TRUE COPY OF THE GOVT. ORDER BEARING NO.G.O.(Rt.) NO.3916/02/G.Edn. DATED7.11.2002

EXT.R10(d) TRUE COPY OF THE JUDGMENT OF THIS COURT DATED 27.01.2005 IN OP No.36419/2002

//True Copy//

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 15276 OF 2007

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Dated this the 22nd day of August, 2007

J U D G M E N T

Petitioners are the plaintiffs in an unnumbered suit to be filed before the Munsiff's Court, Parur which was filed before the Vacation Court (District Court), Ernakulam during the last Summer Vacation. The main prayer in the suit was to declare that defendants 2 to 14 have no right or authority to convene a General Body Meeting of the first defendant, Dharmartha Dayini Sabha on 22.5.2007 or on any other day. In that suit petitioners filed I.A. No.1889 of 2007 for an order of temporary injunction restraining defendants 2 to 14 who are counter petitioners 2 to 13, from convening General Body Meeting of the first defendant Sabha and from conducting the election of the office bearers of the Sabha on 22.5.2007 or any other day till the disposal of the suit. Since the suit to be filed before the Munsiff's Court Parur was filed before the District Court, Ernakulam, who was exercising the power of the Vacation Judge, I.A. alone was numbered. Learned District Judge ordered notice. Contesting respondents appeared. Learned

Judge heard both sides and passed the following order.

> "R4 to R12 appeared. R5 does not appeared. Heard both sides. Urgent orders are not necessary at this stage. Call on 23.5.2007".

Challenging that order, this Writ Petition is filed.

2. When the Writ Petition came up admission, this Court admitted the same and passed an interim order to the effect that validity of the election will be subject to the result of the Writ Petition. Subsequently on 14.6.2007 this Court passed another order which reads as follows:

> "Respondents 1, 2 to 4 and 5 to 13 and 14 enter appearance through counsel. The newly elected body is directed not to finalise any appointment till 21.6.2007. The case is posted for hearing on 20th June, 2007. Meanwhile respondents can file counter".

The above interim order is being extended from time to time. Contesting respondents have filed counter affidavit also.

3. The challenge in the Writ Petition is against an interim order passed by a Vacation Judge in an interim application in a suit which ought to be filed before the

Munsiff's Court, Parur, but filed before the Vacation Court (District Court) Ernakulam. Learned District Judge found that no urgent orders were necessary at that stage and posted the case on the re-opening day.

4. Even accepting the arguments of the learned counsel for the petitioners and first respondent that the order passed by the learned District Judge is wrong, no relief can be granted in this Writ Petition. I find it very difficult to agree with the argument of the counsel for the petitioners that the Vacation Court has no jurisdiction to pass such an order. Power to pass orders does not take in correct orders alone. Even if the order passed is a wrong one, still that order is with jurisdiction.

5. In the Writ Petition the reliefs sought for are the following:

> "a) A writ of certiorari or other appropriate writ, order or direction quashing Exhibit P1 order dated 14.5.2007 passed by the District Court (Vacation Court), Ernakulam.
>
> b) Issue an order directing the District Court (Vacation Court) to take up Exhibit P3 injunction petition forthwith and to pass orders therein on merits

without delay.

c) Grant an order restraining the conduct of the General Body Meeting of the 1st respondent society or the election called on 22.5.2007 pursuant to Exhibits P10 and P11 notices by respondents 2 to 14".

6. So the first relief sought for was to quash the interim order passed by the Vacation Court and the second relief was to direct the Vacation Court to pass orders in the interim application. Even if I quash Exhibit P1 order, it is not possible to grant the second relief since the Vacation is already over and the records must have been transmitted to the proper court. Third prayer was to restrain the conduct of the General Body Meeting of the first respondent on 22.5.2007. That day is also over. The remedy available to the petitioners is to pursue the suit which they have already filed.

7. Learned counsel appearing for the petitioners submitted that in view of the pendency of this Writ Petition before this Court, they did not appear before the trial court and they are not aware of the present position of the suit. At best it might have been dismissed for default. If the

petitioners file an application for restoration, the trial court shall consider the same and pass orders in accordance with law.

Without prejudice to the rights of the petitioners to pursue their remedy in the suit, this Writ Petition is closed. There will be a direction to the trial court to consider the injunction application as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment, if the suit and I.A. are pending before that court.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 15276 OF 2007

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J U D G M E N T

22ND AUGUST, 2007